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In the Supreme Court of the United States

October Term, 1940.

THE SCHRIBER-SCHROTH COMPANY,
Petitioner,
vs.
THE CLEVELAND TRUST COMPANY,
CHRYSLER CORPORATION,
Respondents.
No. 9.

THE ABERDEEN MOTOR SUPPLY COMPANY,
Petitioner,
vs.
THE CLEVELAND TRUST COMPANY,
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THE F. E. ROWE SALES COMPANY,
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THE CLEVELAND TRUST COMPANY,
CHRYSLER CORPORATION,
Respondents.
No. 11.

RESPONDENTS' BRIEF ANSWERING "PETITIONERS' REPLY BRIEF MAKING REFERENCE TO ADDITIONAL RECORD PAGES."

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Petitioners have in their reply brief made six assertions and cited numerous pages of the record in connection with each. If it is sought thereby to create the inference that these portions of the record contradict our position, or support those of the petitioners, then such inference would lead to error. The contrary is the fact. It

is manifestly impossible for us to quote from each of the pages of the record to which reference is made. We, therefore, must content ourselves with citing a few excerpts only on each point. We adopt the numberings of the petitioners in answering the sections so numbered.

(1) On the subject of the structure and mode of operation of the accused piston, Exhibit 1, to secure a definite result, we cite the following (R. p. 125):

"Q. But you don't think even with that device you can even appreciably close the slot at the top of Exhibit 17? A. Appreciably, well, I don't know, but *I will say the difference of a thousandth of an inch in effective diameter is the difference between success and failure in piston improvement,* and I would question whether you could see a thousandths of an inch movement with the naked eye." (Emphasis ours throughout unless otherwise indicated.)

* * * * *

"Q. You can almost close it? A. Yes, I should say that that is *easily ten times as much as it would be called upon to flex in the motor.*

"Q. You think that that pressure you applied there is just about the pressure you would encounter in an automobile cylinder? A. No, I think that is probably ten times as much as would be applied in those particular directions.

"Q. You think the pressure in the automobile is ten times? A. No, I think the pressure I applied there. *I just mention that the degree of flexing is probably ten times as much as that piston would ever be called upon to flex in a motor.*" (Exhibit 17 is the same as Exhibit 1.)

Record page 261:

"Q. More web flexibility than Mr. Ricardo? A. Well, *Ricardo has no web flexibility,* because he has no place for the web to flex. *He has the rigid, non-flexible structure* whereas Maynard has a flexing structure."

(2) On the Jardine performance.

Record page 75:

"There is another way to help compensate for the excess expansion of the aluminum and that is by taking advantage of such *distortion* of the piston as may be produced by the differences in temperature of the different parts of the piston. *The Jardine construction represents an example of this.* When the piston head portion is heated to a high temperature, it expands more than the cooler skirt portion. Inasmuch as it is integrally connected to the skirt portion only in the region above the bosses, this entire head expansion tends to spread or increase the diameter of the piston in a direction parallel with the wrist pin boss.

"We may refer to two varieties of expansion: one as thermal expansion. This is the normal expansion of the metal as the result of being heated to a certain temperature. The other is mechanical expansion. That is the expansion due to mechanical forces, no matter what the origin."

Record page 140:

"A lot of these things that seem simple, seem to have escaped the imagination or the efforts of the best brains of the world for many years. So it isn't for me to say just what required ingenuity and what didn't, after the thing is twelve years or more old."

Record pages 142 and 143:

"No, there were thousands of alternatives. After a thing like this is once developed and then you see the final results, you may bring them down to a few alternatives; *but when people are trying to get these results and grapple in the dark, then there are thousands of alternatives.*

"Q. How do you know Jardine was trying to get these results? A. Because I had been connected with him in the same organization for several years prior to his achievement here.

"Q. And he was struggling along on the solution of this problem? A. Yes, he was, as were many other people.

"Q. But Jardine particularly was struggling? A. Yes, he was working hard on it.

"Q. * * * A. No; *the struggle began when the problem came with the excessive expansion of aluminum alloy pistons when operated in cast iron cylinders, and one only had to be connected with the piston business a few weeks to learn of that difficulty.*"

(3) This subject of the commercial success and public adoption of Jardine was dealt with at page 29 of our Main Brief here.

(4) On the deficiencies and derelictions of the Long piston.

Record page 676:

"Q. Will you state whether or not you yourself were working on this problem of trying to cure these troubles? A. *My gosh, everybody was working on them.* My job was inspector of the testing shed, I turned down the cars for the engine being noisy, and the experimental department, which was another division in the plant, would come over and try to give us a little help *with the grief we were having*, and make various suggestions, and bring over different things for us to put on.

"(Narrative continued) Besides the schemes I have named, that were used to try to rectify these troubles, we used to put an expanding jack inside of them, and throwed them aside, discarded them; and the fit of the wrist pin was changed from time to time, feeling, well, I suppose if we put a little drag on the wrist pin fit, the clearance, it would change the picture a little bit. *It was just one continuous thing to another; every week somebody had a suggestion and we would follow it through. And to make the aluminum piston stay in the Franklin engine, that was the whole thing, because it had some features—light weight over the cast iron; it was a nice piston to think about.*"

Record page 986:

"Q. You regard the Long piston, then, as not being any solution to any problem? A. It is not a solution to the automotive piston problem, no."

Record page 996:

"Q. Well, whether you had relief or not, the skirt would expand in the region of the wrist pin bosses more than at right angles to it? A. Yes, it would.

"Q. And it would begin to wear down, wouldn't it? A. It would bear against the cylinder there."

(See also pages 79 to 80 of our Main Brief.)

(5) On the deficiencies and derelictions of the other prior art pistons.

Record page 145:

"Q. What was the matter with the Ricardo piston? A. *It slapped when it was fitted loose enough so that it would not stick or seize. It seized when it was fitted close enough that it would not slap.* And it pumped oil."

Record page 203:

"A. The Franquist construction is not like the Jardine construction and is not designed to function like the Jardine construction. The vertical ribs and grooves in the Franquist construction are not the equivalent of the vertical slots of the Jardine construction."

Record page 263:

"Q. You make it a particular point that Hartog has no piston rings at the top and therefore that is one of the disadvantages of the piston? A. Oh, I should think the piston would be inoperable from that standpoint alone, if from no other."

Record pages 1025-26:

"Q. All you know, it looks like a picture in a magazine? A. Oh, no, I said that that looked like pistons which the Aluminum Company was testing of the Ricardo type.

"Q. And you say that cannot be cast in the permanent mold? A. No, I told you that by special effort a piston like that can be cast in a permanent mold. It requires four extra pieces in each mold to put in the regions around the inside of the head above the bosses.

"Q. And I suppose it is your position that even if you split one of these slippers the webs would be too stiff to do any good at all? A. That wouldn't make a good piston, if the slippers were slotted vertically.

"Q. Why not? A. *For the reason that the webs are too stiff.*

"Q. The webs are too stiff to flex? A. *Not too stiff to flex some, but they are too stiff to do enough good to make the piston work out.*"

(6) While, as shown at Record page 2108, certain of Jardine's claims were cancelled, he continued to claim combinations including webs which were flexible; he never, at any time, claimed "flexible webs" as such, but always, when interpreted in the light of his specification, as elements of his combinations.

It is not only incorrect to say that Dr. Jeffries admitted that his testimony regarding the wide commercial adoption and signal success of pistons embodying the Jardine invention was based on hearsay (at the page cited he said it was on records), but immaterial, because defendants' expert, Mr. Stellman, said the same things (R. pp. 462 and 471) and, based on personal knowledge, said that such pistons as Exhibits 1 and 17 did embody Jardine's invention (see R. pp. 82-84, for example).

Respectfully submitted,

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Cleveland, Ohio,
Oct. 15, 1940.

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